

Tennessee Real Estate news-journal

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REAPPOINTMENTS

Governor Phil Bredesen reappointed William E. "Bear" Stephenson of Clinton and David L. Flitcroft of Oak Ridge for a second term as Commissioners of the Tennessee Real Estate Commission. Both Commissioners have done outstanding jobs during their initial terms.

Stephenson, who is the principal broker and owner of Stephenson Realty and Auction, was first appointed to the Commission in June, 2004. With over 27 years experience in the real estate and auction professions, Stephenson is able to use his great knowledge of the real estate industry to help reason through many of the tough issues which face the Commission each month. Stephenson works tirelessly behind the scenes as an auctioneer extraordinaire for many benefit auctions throughout Tennessee.



Bear Stephenson



David Flitcroft

Flitcroft was first appointed to the Commission in April, 2007 as a consumer member to fill a vacancy left by a retiring Commissioner.

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Tune Award for Excellence in Education Presented to Charles M. Haynes

Commissioner Charles M Haynes was presented the 2009 William "Bill" Tune Award for Excellence in Education at a luncheon held in his honor at Chappy's Restaurant in Nashville on November 4, 2009. Haynes is the longest serving member of the Commission and as a result, has been able to offer many invaluable historical perspectives on issues that come before the Commission. Honored on the same day for his 40 plus years in the real estate industry, Commissioner Haynes has made it a priority to give back to the real estate industry. This celebrated resident of Gallatin and seven time Chairman of the Commission has worked tirelessly each meeting and beyond to share his wealth of industry knowledge with beginners and long time professionals, both of whom have frequently sought his advice. Commissioner Haynes was the driving force behind the idea to have breakfasts honoring TREC's 40 year licensees, as he realized the invaluable contributions made to the profession by these licensees. Congratulations to a most deserving Charles Haynes!



Chairman and Vice Chairman Elections

The annual election of the TREC Chairman and Vice Chairman was held during the July, 2009 Commission meeting. Grover Collins was elected Chairman and Isaac Northern was elected Vice Chairman. Both men now have had several months in their new roles as Chairman and Vice Chairman and are doing an excellent job.

Chairman Grover Collins is serving in his first term as a Commissioner on the Tennessee Real Estate Commission. Collins is a life long Tennessean and long time resident of Lewisburg, where he is the principal broker of the firm he established in 1970, Grover Collins Real Estate and Auction, Inc. and owner of Collins & Miller Insurance Agency. He is well respected and actively involved in the Lewisburg community, having been President of the Rotary Club, President of the Marshall County Chamber of Commerce and President of the Southern Middle Tennessee Association of Realtors. As a former educator, Collins has long been interested in all aspects of education for licensees. He has worked tirelessly as head of the Education Committee to establish educational standards that will allow the real estate industry to reach and maintain a high level of professionalism.



Grover Collins



Issac Northern

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CONTINUING EDUCATION UPDATE

All licensees have now finished with the staggering of their license and the date which appears on your license is your expiry date from this point forward, if you continue to renew in a timely manner. Since all licensees have once again entered the familiar two year renewal cycle, all affiliate licensees licensed on or after July 1, 1980 and all brokers licensed on or after 1/1/2005, will need 16 hours of CE before their expiry date or their license will not renew. The 16 hours must consist of 4 hours of the mandatory TREC CORE and 12 hours of elective education. All education must be approved in advance by the Commission and no credit will be given where the content of a course duplicates or repeats that for which credit has previously been awarded within the same renewal period. Please note that the curriculum for the 4 hour TREC CORE course is defined every two years by the Commission and it is not the same as, and has nothing in common with, the NAR 4 hour Quadrennial Ethics course. The Commission requires the 4 hour TREC CORE and no other course can be substituted for this and no license requiring CE to renew, will renew without it, even if a licensee's total CE hours exceed the required 16 hours.

Each licensee can check their own education status by visiting the TREC website www.tn.gov/commerce/boards/trec. Once on the website, go to license search (right hand side). When you enter license search, you will be asked to put in the combination of letters and/or numbers which appear in the security box. When entered correctly, the license search boxes will appear. All you need to do then is fill out the requested information and your basic information will appear. Press details and your CE information should be ready for you to check. Remember that sponsors/schools have ten working days after course completion to download the student rosters to TREC.

The TREC website has a listing of all approved schools and courses that is updated after every Commission meeting. To look for a school or a class, you will need to go to the TREC website and enter the area which contains the education information. At that time, you will be asked for a login and password. The login is "guest" and the password is "report". These words are provided on the website also. The schools are listed in alphabetical order with school contact and approved courses for each school listed below the school name. The course formats are noted by these indicators:

- Classroom (CR)
- Paper/pen correspondence (PP)
- Disk Based (DB)
- Internet (I)

Elections...cont.

Memphis is the hometown of the Vice Chairman, Isaac Northern, who has practiced real estate for over 30 years. He is the principal broker of Northern, Inc and is currently serving in his second five year term as a member of the Tennessee Real Estate Commission. Northern has been president of the Memphis Area Association of Realtors, a participant in Leadership Memphis and a member of the TAR Presidential Advisory Group. Northern has been very active in a number of community organizations, including the Shelby County Health, Housing & Education Facilities Board and the Alliance for Equitable Growth. He also has been very supportive of initiatives to improve the educational programs offered to licensees. A business owner as well as a real estate professional, Northern has been able to offer well reasoned opinions on matters which come before the Commission.

ESCROW ACCOUNTS

Every firm must have an escrow account or have a waiver from TREC. If a firm has an escrow account, the account information is to be on file with TREC. An escrow account should be so designated as such by the bank in which the account is located and all deposit tickets and checks drawn on the account should state trust account or escrow account. An escrow or trust account is defined as a bank account into which trust money (and only trust money) is deposited. It must be a *separate account* in which funds of another are deposited and held on behalf of a third party. Rule 1260-2-.09 requires that all monies received by a real estate licensee acting in his fiduciary capacity must be deposited into an escrow account. The principal broker is held responsible for ensuring that all monies are deposited into the escrow account as quickly as possible, and that no monies are taken from the escrow account for personal use or for the general operation of the firm or its business. The Commission does not recognize the existence of an "operating escrow account" – an escrow account is only used for monies such as earnest money deposits or security deposits—monies that are being held for the

benefit of other parties. It is very important that all parties understand the proper use of an escrow account and that each principal broker make sure that all trust monies are turned over to him as soon as possible after receipt by an affiliated licensee and that he keep records sufficient to verify the proper use of the escrow account. It is never acceptable to "borrow" money from the escrow account or to pay oneself or another out of the escrow account. Once a signed request for earnest money disbursement is received by the holder of the earnest money, a decision regarding the disposition thereof should be made without unreasonable delay. Any decision regarding the earnest money should be communicated as soon as possible to all parties. Interpleader is always an option if it appears that the question of the disposition of the earnest money will not be resolved among the parties without unreasonable delay. If there are any questions regarding the use of the escrow account, your bank should be able to answer those questions and to help establish safeguards so that the account is always used properly.

ERRORS & OMISSIONS INSURANCE

At this point, all licensees should have a two year Errors and Omissions Insurance Policy. There are, however, still a few licensees who still do not have a conforming E & O policy as required by TCA 62-13-112 and Rule 1260-1-.04. On January 5, 2009, there were about 11,000 active licensees who did not have E & O, so we are very glad that most licensees have now complied with the statutory requirements. Licensees who bought E & O insurance after their policy expired were fined in accordance with the penalties established by the Commission. The fines were calculated from the actual date of purchase, not from the effective date of the E & O coverage. Licensees, who failed to obtain E & O insurance 120 days after the expiration of their policy, have received formal charges from the legal department seeking revocation of their license. The penalty schedule can be found on the TREC website.

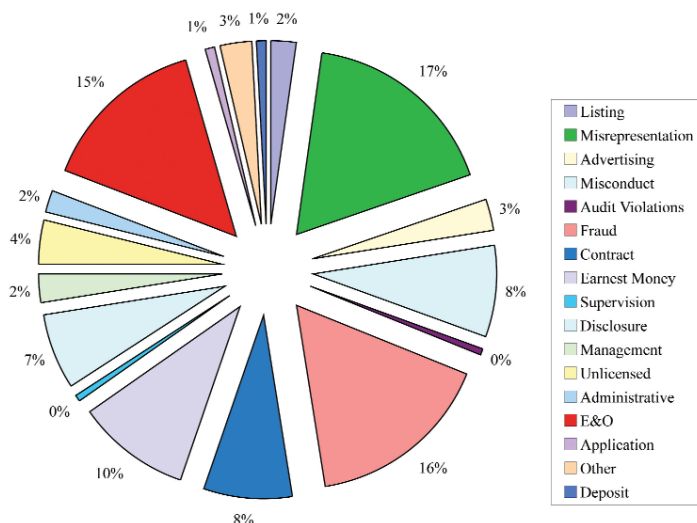
The current RISC Insurance E & O policy will expire on 12/31/2010 – in just 12 months. Please plan ahead and remember to renew this policy or any E & O policy which you have with an alternate carrier, prior to the expiration date. RISC Insurance downloads information directly into the TREC system. Since most alternate carriers do not download into the TREC system, the Alternate and Equivalent E & O Insurance Coverage form must be filed with TREC in order for the E & O to be reflected in the TREC system.

NOTIFICATION OF ADDRESS CHANGE

TREC has a high number of letters and postcards addressed to licensees returned by the U.S. Postal Service each week due to incorrect mailing addresses. State mail is not forwarded, so without a correct address on file with TREC, the mail will most likely not reach you. TREC makes every effort to resend (with a TREC 1 form included) all mail that is returned with a forwarding address; however most mail is returned undeliverable as addressed with no forwarding address. All licensees are required to notify TREC in writing of any change of business or home address within ten days of the change. Should you fail to keep TREC up to date on your current address, you may not receive renewal notices, E & O notices, education notices, complaints or other notices sent out by TREC. Every mailing sent out by TREC is important and the failure to respond to any one of them could subject a licensee to fines or the expiration of the license. A residence address can be changed for free. It can be emailed, faxed or sent by post. A change of business address requires a TREC 1 form and a \$50.00 fee. Failure to advise TREC of a change of business address within 10 days could result in a minimum \$750.00 fine, so it just makes sense to let TREC know where you are.

COMPLAINTS AND THEIR FREQUENCY

TREC's legal staff has supplied information concerning open cases (complaints) and their frequency. Please see the pie chart (below) which provides this data in terms of both numbers and percentages.



IMPORTANT REMINDERS, TIPS AND ALL TOO COMMON PITFALLS

- 1. RELEASING AN AFFILIATE:** If you are a Principal Broker signing a TREC 1 form releasing an affiliate, regardless of the reason, fax, email or mail the TREC 1 form to TREC, even if you give the original to the released licensee for retirement or transfer. Please always make a copy of the TREC 1 form for your files, so that you have a record of what was transmitted to TREC. TREC can broker release the affiliate upon receipt of the executed TREC 1, since there is no fee to broker release an affiliate. This will terminate the relationship on TREC's records and avoid problems encountered when the affiliate has a change in plans and the TREC 1 never gets turned in to TREC. Without receipt of the TREC 1, TREC has no notice or knowledge that an affiliate has been broker released.
- 2. INITIAL RETIREMENT AN OPTION:** TCA 62-13-303(d) provides that each applicant who passes the licensing exam(s) shall submit an application for the appropriate license to the Commission within six months after the date of the examination. This six month period shall be counted commencing the day immediately following the pass date recorded by the state testing provider. An applicant can place the license in immediate retirement, so an applicant does not have to wait until a principal broker is secured before sending in the completed application if requesting initial retirement.
- 3. REASONABLE SKILL AND CARE:** Always remember that TCA 62-13-403(1) establishes a duty for each licensee to diligently exercise reasonable skill and care in providing services to all parties in the course of every real estate transaction.
- 4. ANSWER COMPLAINTS:** If you are the Respondent in a complaint filed with TREC, remember to answer all allegations in the Complaint fully and completely and supply any and all documentation which might support your position. If you fail to answer, then the Commission has only the allegations contained in the Complaint upon which to make a decision and your side of the story cannot be considered, because it will not be known. The Commission works very hard to make sure that they consider all the facts before them fairly and judiciously before making a decision.
- 5. COMMUNICATION IS THE KEY:** Misrepresentation still tops the list of complaints filed. Often, as the situation unfolds, it appears that the Complaint could have been avoided if there had been more consistent and frequent communication among the parties. Even if it seems superfluous, sometimes an additional email or quick phone call updating the status of the situation can keep all the parties satisfied regarding the transaction. This seems particularly true in situations involving foreclosures, short sales and REOs.
- 6. ZIP CODE PLEASE:** TREC is now sending Renewal Postcards to both the licensee's home and the licensee's firm. For licensees with an active license and firm affiliation, when entering the zip code to pay on line, please enter the firm zip code – this is the zip code which is recognized by the computer system.

TREC POLICIES ON WEB-SITE

All current TREC policies are on the TREC web-site at: <http://state.tn.us/commerce/boards/trec/policies.html>
Please review them frequently so that any changes concerning your license are noted. Policies can be added by the Commission or removed when they become obsolete or are replaced by rule or law.

"The Tennessee Department of Commerce and Insurance is committed to principles of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator (615) 253-7685.

**Click link below for the
Tennessee Real Estate
Commission Disciplinary Report**

[http://state.tn.us/commerce/boards/trec/documents/
DAR_Initial_012010.pdf](http://state.tn.us/commerce/boards/trec/documents/DAR_Initial_012010.pdf)



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INACTIVE VS RETIRED LICENSE

The Tennessee Real Estate Broker License Act of 1973 does not offer a licensee the option to choose to become "inactive." Under the Broker Act, a licensee can only choose to be active or retired. If a licensee does not want to practice real estate, but wants to retain the license, then that licensee needs to complete a TREC 1 Form requesting that the license be placed in retirement. This form must be transmitted to TREC with the applicable fee, which is currently \$25.00. If the licensee has not completed all of the required education, TCA 62-13-318 prohibits the retirement of the license. In such instances, the license is placed in a "holding status" called inactive until the education requirements have been timely completed. Inactive is not a status that a licensee can choose or assume, simply because the licensee has decided to stay home or to engage in other employment—inactive is a only a holding status for a licensee who has filled the necessary paperwork to retire, but who lacks any portion of the required education to do so. A licensee who has been placed in an inactive status cannot practice real estate at all. Only a licensee whose license is in an active status and who has met all of the license requirements can engage in the practice of real estate in Tennessee.

The two educational deficits which keep the license from being retired are: (1) incompleteness of continuing education for licensee when the license was active for one or more days during the licensing period; and (2) incompleteness of the broker post licensing education requirement.

All education requirements must be completed in the required time frames before the license can be retired. A licensee cannot attempt to retire the license to avoid required education. A license placed in an inactive status cannot be renewed, just like an active license cannot be renewed if all of the educational requirements have not been timely met. Once retired, the licensee must continue to pay the license renewal fees to keep the license in retirement. If the fees are not paid, then the retired license will expire on its expiry date.

GLAD TO BE BACK!

After a long break, the TREC newsletter is back! We are glad to be able to make the TREC newsletter available to all licensees and other interested parties. We have a lot of news to share about TREC and many informative articles. We will have the newsletter available on line at least quarterly, but we will have items of particular importance posted on the website or in a newsletter format linked from the website. The disciplinary report, which we know is of interest to all licensees will be updated weekly and available through a website link to the DAR (disciplinary action report). We hope that these changes will make it easier for licensees to keep up with any changes which might be implemented at one of the monthly Commission meetings or administrative changes which might be implemented in an effort to improve communication. If you want to receive the newsletter and any updates by email, please make sure that TREC always has your most recent email address. You may update your email address by going to the TREC website and entering your new address.

New Legislation Effective In 2009

There were several additions and amendments to the Tennessee Code Annotated that emerged from the 2009 Legislative session that will impact real estate licensees. A couple of the additions pertain to disclosures which must be made by a seller, so these are particularly important to note. Please make sure that you update your manual by adding these additions and amendments, so that you always have the most up to date information available.

TCA 66-5-213 is a new section which requires the owner of a residential property to disclose to a potential buyer if the property is located in a planned unit development (PUD). Upon request, the owner must provide a copy of the development's restrictive covenants, homeowner bylaws and master deed. This disclosure must be made prior to entering into a contract with a buyer.

TCA 66-5-212(b) adds a new disclosure requirement for the seller. This new language provides that prior to entering into a contract with a buyer, the seller shall disclose whether any single family residence located on the property has been moved from an existing foundation to another foundation, if such information is known to the seller.

A new subsection, (g), was added to TCA 62-13-309 which states that a principal broker may act as principal broker for two (2) firms as long as those firms are in the same location and share a physical address.

TCA 67-5-2702(1)(a) was amended to read that a person entitled to redeem property may do so within one (1) year from the date of the order of

Number of Licensees as of 11/30/2009

(figures in parentheses are differences from numbers reported last month)

Type	Active	Inactive	Retired	Broker Release*	Grand Total
People	28,305 (-173)	2,251 (-194)	10,320 (+72)	1,166 (-95)	42,042 (-390)
Firms	4,472 (-1)		350 (+4)		4,822 (+3)
Totals	32,777 (-174)	2,251 (-194)	10,670 (+76)	1,166 (-95)	46,864 (-387)

*Broker Released licensees are those usually in the process of transferring or going inactive/retired.

Timeshare Registrations Active	180 (-1)
Vacation Lodging Services Active	131 (-1)
Licensed Acquisitions Agent Active	157 (-4)

INDIVIDUALS

FIRMS

	12/2009	12/2008	CHANGE		12/2009	12/2008	CHANGE
Active	28,305	32,408	4,103		4,470	4,657	187
Inactive	2,203	2,575	372				
Retired	10,321	9,518	803		351	296	55
Broker Release	1,153	1,856	703				
GRAND TOTAL	41,982	46,357	4,375		4,821	4,953	

NUMBER OF TEST TAKERS

Time Period	Affiliate Broker	Broker	Time Share	Acquisition Agent	TOTAL TESTERS
1/1/2009-11/30/2009	2,041	474	271	28	2,814
1/1/2008-11/30/2008	3,078	614	787	73	4,552
1/1/2007-11/30/2007	7,159	811	813	102	8,885

BROKERS LICENSED AFTER JANUARY 1, 2005 MUST NOW COMPLETE CE

For all brokers licensed after January 1, 2005, continuing education will now be required each renewal period. Specifically, beginning with the license period immediately following the license period in which the licensee completes the 120 hours of broker post licensing education, the broker licensee (licensed after 1/1/2005) shall furnish certification of satisfactory completion of sixteen hours of approved continuing education from an approved sponsor/school as a prerequisite for the reissuance of the license. Four of the sixteen hours of continuing education must consist of the TREC CORE course as designated by the Commission. This CE information will be downloaded from the sponsor/schools and they will have ten working days in which to download it to TREC.

TREC COMMISSION MEETING DATES 2010

Date	Day	Meeting Site
January 6-7, 2010	Wed. & Thurs	Nashville - Davy Crocket Bldg., Room 160
February 3-4, 2010	Wed. & Thurs	Nashville - Davy Crocket Bldg., Room 160
March 9-10, 2010	Tues. & Wed.	Murfreesboro - meeting at Embassy Suites in conjunction with the TAR conference
April 15-16, 2010	Thurs. & Fri.	Chattanooga - Location TBA
May 13-14, 2010	Thurs. & Fri.	Memphis - Location TBA
June 2-3, 2010	Wed. & Thurs.	Nashville - Davy Crocket Bldg., Room 160
July 7-8, 2010	Wed. & Thurs.	Nashville - Davy Crocket Bldg., Room 160
August 4-5, 2010	Wed. & Thurs.	Nashville - Davy Crocket Bldg., Room 160
September 2-3, 2010	Thurs. & Fri.	Jackson - Location TBA
October 7-8, 2010	Thurs. & Fri.	Sevier County - TBA
November 3-4, 2010	Wed. & Thurs.	Nashville - Davy Crocket Bldg., Room 160
December 1-2, 2010	Wed. & Thurs.	Nashville - Davy Crocket Bldg., Room 160

As of December 7, 2009

TREC Contact Information

(615) 741-2273 or (800) 342-4031

www.state.tn.us/commerce/boards/trec**Personnel & Areas of Responsibility****Administration:**
Eve Maxwell**Administrative Assistance**Betsy Bowman
Kelly McDermott**Office Manager:**
Dennis Hodges**Board Meetings:**
Kelly McDermott**Complaints:**
Conell House**Licensing:**
Patricia Appleton
Hester Curtis
Kim Dorris
Gil DyerRachel Fowler
Deborah Malugen
Karen Patton
Richard Thomas
Paula VanBuren**Reception & Records****Management:**
Ken Spurlock
Linda Wolfert
David Freyer**Errors & Omissions Insurance**Contractor for
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Fax: (502) 897-7174
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Eve Maxwell, Executive Director

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Knoxville, TN**New Legislation...cont.**

confirmation of sale, rather than the date the property was sold. In any county having a population of less than four hundred thousand (400,000), property may be redeemed within ninety (90) days after the date of the recording of the tax deed.

Two new sections concerning education were added to the Real Estate Brokers Act. **TCA 62-13-324** makes law the instructor qualifications set forth in Commission Rule 1260-05-.04. The new law provides that the Commission may charge a fee of up to \$25 for each instructor in an education cycle. The law also adds the requirement that each instructor teaching the core course must take a four (4) hour

instructor course and each instructor teaching agency must complete an approved instructor course on agency. **TCA 62-13-325** makes law Commission Rule 1260-05-.11 Correspondence Courses. The law adds the provision that a distance education version of the basic principles of real estate course must include at least one (1) student interaction with a commission-approved instructor for every five (5) hours of credit.

The Tennessee Code Annotated and the Commission Rules can be reached from a link on the TREC website. This link should take you to the most recent version of the TCA and the Commission Rules.

Reappointments...cont.

Flitcroft has been a practicing attorney for over 30 years and has written and taught extensively on variety of legal issues relating to real estate. His insight as an attorney has been a great benefit to the Commission.

In an effort to provide outstanding service to individuals who call the TREC office, all staff members are required to introduce themselves by name. When calling, please note the name of the staff person with whom you spoke, in case you need to contact that person again.

Tennessee Real Estate Commission

500 James Robertson Parkway, Suite 180

Nashville, TN 37243-1151

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P A I D

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